

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

INTAGIO CORPORATION,
Plaintiff(s),
v.
TIGER OAK PUBLICATIONS INC.,
Defendant(s).

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS AND MOTION
TO DISQUALIFY**

This matter came on for hearing on defendant Tiger Oak Publications' ("Tiger Oak") motion to dismiss for lack of personal jurisdiction and motion to disqualify plaintiff's counsel Steve Lewicky. Steven Lewicky appeared for plaintiff Intagio Corporation ("Intagio") and James Dombroski appeared for defendant. The court DENIES both motions for the reasons stated at the hearing and summarized below.

As the court previously held in denying defendant's first motion to dismiss for lack of personal jurisdiction, because plaintiff relies on the very contract at issue in support of its assertion that defendant has sufficient minimum contacts to support personal jurisdiction in this forum, the existence of jurisdiction cannot be determined until the disputed facts regarding the existence of the contract are resolved. Whether or not Lewicky testifies at trial is not dispositive of plaintiff's ability to authenticate the contract at trial nor does it have any bearing on his prior declaration. Defendant shall file no further motions to dismiss, without leave of court, for lack of personal jurisdiction until the factual dispute regarding the existence of the contract is resolved by the court or by a jury.

With regard to the motion to disqualify Steve Lewicky, the court finds that defendant has not raised an issue requiring Lewicky's immediate disqualification and with respect to

1 Lewicky's testifying at trial, plaintiff and Lewicky need only comply with Rule 2-111(A)(4) of
2 the Rules of Professional Conduct of the State Bar of California. See Civil Local Rule 11-4;
3 Optyl Eyewear Fashion v. Style Companies, 960 F.2d 1045 (9th Cir. 1985); and Lyle v.
4 Superior Court, 122 Cal.App.3d 470 (1981). Rule 2-111(A)(4) requires the written consent
5 of the client which must be filed with the court not later than the commencement of trial.
6 There is plenty of time for compliance.

7 Motions DENIED. (Docket numbers 60 and 62)

8 **IT IS SO ORDERED.**

9 Dated: January 31, 2007



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11 PHYLLIS J. HAMILTON
12 United States District Judge
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